

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANTHONY L. MOZEE,

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

Respondent.

DOCKET NUMBER WD75750

Date: April 30, 2013

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Before Division Two: Alok Ahuja, P.J., Lisa White Hardwick and Karen King Mitchell, JJ.

Attorneys:
Anthony L. Mozee, Charleston, MO, Appellant Pro Se.
Michael J. Spillane, Jefferson City, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ANTHONY L. MOZEE

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

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WD75750

Cole County

Appellant Anthony Mozee is currently incarcerated. He was sentenced in 1995 to a term of life imprisonment for second-degree murder, and to a consecutive term of twenty years for armed criminal action. Respondent Missouri Board of Probation and Parole determined that, under 14 CSR 80-2.010(D), Mozee would not be eligible for parole on his armed criminal action conviction until he had served one-third of his twenty-year sentence, or seventy-nine months. Mozee filed a petition seeking declaratory relief in the Circuit Court of Cole County, arguing that the Board's regulation was unlawful as applied to armed criminal action convictions, because it was contrary to § 571.015.1, RSMo, which provides that "[n]o person convicted [of armed criminal action] shall be eligible for parole . . . for a period of three calendar years." The circuit court rejected Mozee's arguments, and entered judgment on the pleadings for the Board. Mozee appeals.

AFFIRMED.

Division Two holds:

Mozee's argument depends on the proposition that the three-year period specified in § 571.015.1 establishes not only the *minimum* period before an inmate convicted of armed criminal action can be eligible for parole, but also the *maximum* period. According to Mozee, inmates convicted of armed criminal action *must* be eligible for parole three years after they begin serving their sentence, no more and no less.

The Missouri Supreme Court rejected this argument in *McDermott v. Carnahan*, 934 S.W.2d 285 (Mo. banc 1996). *McDermott* held that, under § 571.015.1, an inmate convicted of armed criminal action "is precluded from receiving a parole hearing in the first three years of his sentence. [The statute] does not give him a vested right to a parole hearing immediately upon serving three years of his sentence." *Id.* at 287-88.

Because § 571.015.1 does not guarantee an inmate convicted of armed criminal action that he will be eligible for parole on that conviction after three years, the Board regulation requiring an inmate convicted of a violent offense to serve one-third of his sentence before being parole-eligible is not inconsistent with the statute. The Board properly relied on the regulation to determine Mozee's parole eligibility.

Before Division Two: Alok Ahuja, P.J., Lisa White Hardwick and Karen King Mitchell, J.J.

Opinion by: Alok Ahuja, Judge

April 30, 2013

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